

**IN THE UNITED STATES DISTRICT COURT
FOR THE FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION**

LYNN HENDERSON, KRISTINA
KULON, B. DAVID MORBY, JASON
ROBINSON, KEVIN MORRIS, and
JOHN LEET, individually and on behalf
of others similarly situated,

No. 2:09-cv-04146-CCC-JAD

Plaintiffs,

vs.

VOLVO CARS OF NORTH AMERICA,
LLC, and VOLVO CAR
CORPORATION,

Defendants.

**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL APPROVAL,
ENTERING JUDGMENT REGARDING SETTLEMENT,
AND DISMISSING THIS ACTION WITH PREJUDICE**

WHEREAS, this matter has come before the Court pursuant to
Plaintiffs' Unopposed Motion for an Order Granting Final Approval of Class
Action Settlement and Certifying a Settlement Class (the "Motion");

WHEREAS, the Court finds that it has jurisdiction over this Action.¹

WHEREAS, on June 22, 2012, this Court granted Plaintiffs'
Unopposed Motion for Preliminary Approval of the Settlement Agreement

¹ Capitalized terms herein have the meaning as specified in the Settlement Agreement.

and Provisional Class Certification (the “Preliminary Approval Order”);

WHEREAS, the Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes only;

WHEREAS, the Court has held a hearing on October 4, 2012 to consider the fairness, reasonableness and adequacy of the Settlement Stipulation, has been advised of all objections to the Settlement and has given fair consideration to such objections;

WHEREAS, the Court has considered the Motion, the Stipulation of Class Action Settlement, and the exhibits thereto (the “Settlement Stipulation” or the “Settlement”), and objections to the proposed Settlement; and

WHEREAS, the Court is otherwise fully advised in the premises and has considered the record of these proceedings, the representations, arguments, and recommendation of counsel for the parties, and the requirements of law.

IT IS HEREBY ORDERED THAT:

I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

The terms of the Settlement Stipulation are approved. The Settlement is in all respects fair, reasonable, adequate and proper, and in the best interest of the Class. In reaching this conclusion, the Court has considered a

number of factors, including an assessment of the likelihood that Plaintiffs would prevail at trial; the range of possible recovery available to such Plaintiffs; the consideration provided to Settlement Class Members pursuant to the Settlement Stipulation as compared to the range of possible recovery discounted for the inherent risks of litigation; the complexity, expense and possible duration of such litigation in the absence of a settlement; the nature and extent of any objections to the Settlement; and the stage of proceedings at which the Settlement was reached.

The proposed Settlement was entered into by experienced counsel and only after extensive arms-length negotiations, including through mediation supervised by an experienced mediator. The proposed Settlement is not the result of collusion. The proposed Settlement was entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class. Class Counsel and the Class Representatives have fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Stipulation.

II. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

A. CERTIFICATION OF SETTLEMENT CLASS

Consistent with its Preliminary Approval Order, the Court hereby grants class certification of the following settlement class for purposes of

final approval:

All current and former owners and lessees of model years 2003-2005 Volvo XC90 T6 Vehicles. Excluded from the Settlement Class are Defendants,² Defendants' employees, officers and directors, and the Judge(s) to whom this Action is or has been assigned.

B. Rule 23(a)

With respect to the proposed Settlement Class as set forth in the Settlement Stipulation, this Court has determined that, for purposes of settlement of the Action only, Plaintiffs have satisfied each of the Rule 23(a) Prerequisites:

1. The Class Members are so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1).
2. There are questions of law or fact common to the Settlement Class. Fed. R. Civ. P. 23(a)(2). Common questions of law or fact include:
(1) whether the Class Vehicles³ were subject to a common design defect; (2) whether Volvo failed to adequately disclose material facts

² As defined in the Settlement Agreement, the Defendants are Volvo Cars of North America, LLC and Volvo Car Corporation, as well as their predecessors, successors, parent companies, subsidiaries, affiliate companies, assigns, directors, officers, agents, attorneys, representatives and employees.

³ As defined in the settlement agreement, the Class Vehicles are all model years 2003-2005 Volvo XC90 T6 vehicles that were sold or leased in the United States.

related to the Class Vehicles prior to sale; (3) whether Volvo's conduct was unlawful; and (4) how any resulting monetary damages to consumers should be calculated.

3. The claims of the Class Representatives are typical of the claims of the Settlement Class. Fed. R. Civ. P. 23(a)(3). Here, Plaintiffs have alleged that Volvo sold defective products and failed to disclose (or to adequately disclose) material facts to members of the Settlement Class. Plaintiffs assert that there was sufficient uniform treatment by Defendants so that each Class Representative and Settlement Class Member presents (i) the same claim concerning (ii) the same conduct and (iii) seeks the same relief from Defendants. The ability of the parties to achieve a settlement on terms applicable to the entire Settlement Class underscores the finding of typicality.

4. Class Representatives will fairly and adequately protect the interests of the Settlement Class. Fed. R. Civ. P. 23(a)(4). The Class Representatives do not have interests that are antagonistic to the Class and are fully aligned with the interests of other Class Members. Accordingly, the Court finds that Class Representatives have satisfied Rule 23(a) for purposes of evaluating this Settlement.

C. Rule 23(b)(3).

With respect to the Settlement as contained in the Settlement Stipulation, the Court also “finds that the questions of law or fact common to class members predominate over any questions affecting only individual members,” and “that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

Here, Settlement Class Members share a common legal grievance arising from Volvo’s alleged failure to disclose or adequately disclose material facts related to the Class Vehicles to any of the class members and the sale of what Plaintiffs identify as defective products. Common legal and factual questions are central to all Class Members’ claims and predominate over any individual questions that may exist for purposes of this Settlement, and the fact that the Parties are able to resolve the case on terms applicable to all Settlement Class Members underscores the predomination of common legal and factual questions for purposes of this Settlement. In concluding that Settlement Class should be certified pursuant to Rule 23(b)(3) for settlement purposes, the Court further finds that a class action is superior for purposes of resolving these claims because individual class members have not shown any interest in individually controlling the prosecution of separate actions. Moreover, the cost of litigation far out paces the individual

recovery available to any Plaintiffs. *See* Fed. R. Civ. P. 23(b)(3)(A).

Accordingly, the Court finds that, for purposes of this Settlement, Rule 23(b)(3) has also been satisfied.

III. NOTICE

The Court finds that the Notice Program (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was the best practicable notice under the circumstances; (iii) reasonably apprised Settlement Class Members of the pendency of the action and their right to object to the proposed Settlement or opt out of the Settlement Class; and (iv) was reasonable and constituted due, adequate and sufficient notice to all those entitled to receive notice. Additionally, the Class Notice adequately informed Class Members of their rights in the Action. *See* Fed. R. Civ. P. 23(c)(2).

IV. DISMISSAL WITH PREJUDICE

This Court hereby enters a judgment of dismissal, pursuant to FED. R. CIV. P. 54(b), of the claims by the Settlement Class Members, with prejudice and without costs, except as specified herein, and except as may be provided for in the Court's order related to Plaintiffs' unopposed motion for attorneys' fees, expenses and incentive awards. The Clerk of Court is directed to close this docket.

V. RELEASES AND FURTHER RELIEF

Pursuant to the Settlement Agreement, Defendants are released from any and all claims or causes of action that were, or could have been, asserted by the Plaintiffs or any Class Members against them, regarding the Class Vehicles' transmissions as alleged in the Action and Litigation. Class members will not, however, be releasing any actual or potential claims for personal injuries related to the Class Vehicles.

VI. OPT-OUTS

A list of those members of the Class who have timely elected to opt-out of the Settlement and the Class, and who therefore are not bound by the Settlement, the provisions of the Settlement Stipulation, and this Order, has been submitted to the Court and is attached at the end of this Order as Exhibit "A." All other members of the Settlement Class (as permanently certified herein) shall be subject to all of the provisions of the Settlement, the provisions of the Settlement Stipulation, and this Order

VII. CONTINUING JURISDICTION

Without any way affecting the finality of this Order, the Court hereby retains jurisdiction over the Parties to the Settlement Stipulation, including all Settlement Class Members, and Class Counsel to construe and enforce the Settlement Stipulation in accordance with its terms for the mutual benefit

of the Parties. The Court shall also retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

Consistent with the Settlement Agreement, it is further Ordered that Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendants in any federal or state court in the United States or any other tribunal.

IT IS SO ORDERED.

Dated: March 22, 2013



HON. CLAIRE C. CECCHI
UNITED STATES DISTRICT JUDGE

EXHIBIT A

LIST OF EXCLUSIONS

	Name & Address	Model	VIN Number
1.	Jose Ameriso 1364 Justin Avenue Glendale, California 91201	2003 XC90 T6	YV1CZ91H031017255
2.	Neal Ashby Leigh Borghesani 112 West Alexandria Avenue Alexandria, Virginia 22301	2004 XC90	YV1CZ91H741131111
3.	Julie Borjon Chris Borjon 430 Pala Avenue Piedmont, California 94611	2004 XC90 T6	YV1CZ91H941098760
4.	Kent Boswell 7866 Scottsdale Drive Newburgh, Indiana 47630-8996	2004 XC90 T6	YV1CA91H641076831
5.	Heather G. Boyd P.O. Box 4957 Palos Verdes Peninsula, California 90274	2004 XC90 T6	YV1CZ91H741034104
6.	Karen Lea Boyles 3916 Sunset Drive Fort Collins, Colorado 80526	2004 XC90 T6	YV1CZ91H941099178
7.	James C. Cochran 4453 Chimney Springs Court Marietta, Georgia 30062-5731	2004 XC90	YV1CZ91H741128547
8.	Jesse Coleman Dora C. Coleman 1854 W. Begonia Drive Beverly Hills, Florida 34465		
9.	Kevin Courtney Curry Melissa Nagem Curry 12129 Lake Estate Avenue Baton Rouge, Louisiana 70810	2005 XC90 T6	YV1CZ91151195541
10.	Kathleen Dirksen 17735 Vonore Road Loudon, Tennessee 37774	2005 XC90 T6	YV1CZ911251172590

11.	Anton A. Dmitriev Sara M. Gillis 701 140 th Place, SW Lynnwood, Washington 98087	2004 XC90	YV1CM91H341072105
12.	Kenneth M. Eckert 50 University Drive Fairfield, Connecticut 06824-3931	2005 XC90	YV1CM911051155558
13.	James A. Eddis III 48 Clipper Way Columbia, South Carolina 29229	2005 XC90 T6	YV1CZ911351184229
14.	Elizabeth Elsner 16301 Arena Drive Ramona, California 92065	2005 XC90	YV1CZ911751160192
15.	Lisa G. Fink 72 Sea View Drive Warwick, Rhode Island 02889	2004 XC90 T6	YV1CM91H241047230
16.	Anthony E. Frey 5995 Bull Road Dover, Pennsylvania 17315	2003 XC90 T6	YV1CZ91H431001060
17.	Garth's Auctions, Inc. P.O. Box 369 Delaware, Ohio 43015	2008 XC90	YV4CZ982581457466
18.	Judith Lynn Gass 19 Blessing Irvine, California 92612	2005 XC90	YV1CZ911951190696
19.	Tracy Taub Gehrt Kevin Edward Gehrt 7439 Merion Court Solon, Ohio 44139	2004 XC90	YV1CZ91H941092750
20.	Kathy Gibson 2706 Appleton Court Ft. Collins, Colorado 80525	2004 XC90	YV1CM91H441055913
21.	Jane P. Gleason 150 Carondelet Plaza #2302 Saint Louis, Missouri 63105	2004 XC90 T6	YV1CM91H641057212
22.	Eric Wayne Hilliard 3512 Leonard Street Raleigh, North Carolina 27607	2003 XC90 T6	YV1CM91HX31018850

23.	Lori Hoffman P.O. Box 182 Londonderry, Vermont 05148	2005 XC90 T6	YV1CM911551143261
24.	Thomas L. Houghtling 15990 Tippecanoe Street, NE Ham Lake, Minnesota 55403	2005 XC90 T6	YV1C2911251134387
25.	William R. Hutchinson Eloyse M. Hutchinson 6574 NE Tara Lane Bainbridge Island, Washington 98110	2004 XC90 T6	YV1CM91HX41125740
26.	Travis Koberg 6120 Emmett Gurds Court Fairfax Station, Virginia 22039	2004 XC90 T6	YV1CZ91H341123880
27.	Michael W. Konken 5901 Yukon Court Apt. D Arvada, Colorado 80004	2004 XC90 T6	YV1CZ91H241097465
28.	Matthew Robert Lodowski Alba Dagny Lodowski 1306 Knox Houston, Texas 77007	2004 XC90 T6	YV1CZ91H641128930
29.	Marisa Manley 81 Greens Farms Road Westport, Connecticut 06880	2004 XC90 T6	YV1CZ91H841083120
30.	Katharine S. Mayer 3135 Briarwood Boulevard Grand Island, Nebraska 68801	2004 XC90	YV1C2914441098343
31.	Rachelle Neilson 1144 W 1850 S Woods Cross, Utah 84087	2005 XC90 T6	YV1CZ911951136606
32.	Angelo Marzocchi Jr. 5 Valley Stream Drive Cumberland, Rhode Island 02864	2003 XC90 T6	YV1CM91H931020041
33.	David J. Medow Barbara Sue Bernstein 3643 N. Janssen Chicago, Illinois 60613	2004 XC90	YV1CZ91H641054554

34.	Heather Miller 4200 SW 107 th Avenue Apartment 3801 Beaverton, Oregon 97005	2003 XC90 T6	VY1CZ91H231004748
35.	Tara Fajoum P.O. Box 413 Pacific Palisades, California 90272	2005 XC90 T6	YV1CZ911X51136694
36.	Andrew Woodall Parmelee 281 High Street Hingham, Massachusetts 02043-3357	2003 XC90	YV1CM91H841064484
37.	Amanda Pascatore 217 Kingsboro Road Rochester, New York 14619	2005 XC90 T6	YV1CZ911251142988
38.	Ashwin Patel 2431 Emerald Trail Minnetonka, Minnesota 55305	2004 XC90 T6	YV1CZ911451141776
39.	Stacey Renee Rings 3682 W. Loxton Loop Coeur d'Alene, Idaho 83815	2005 XC90	YV1CZ911X51151244
40.	Kaj Robert Savenius 3925 Lakeshore Drive Marietta, GA 30067	2004 XC90 T6	YV1CZ91H741067488
41.	David Schwartz 8140 Pershing Avenue Saint Louis, Missouri 63105	2004 XC90	YV1CZ91H941123981
42.	Gregory Scott Smith 634 4H Camp Road Fayetteville, West Virginia 25840-5915	2003 XC90	YV1CZ91H131014669
43.	Matthew Vaggione 121 Vine Street Unit 1407 Seattle, WA 98121	2004 XC90	YV1CZ91H341077547
44.	Kimie M. Wantz 1235 Barlow Two Taverns Road Gettysburg, Pennsylvania 17325	2004 XC90 T6	YV1CM91H141108972

45.	Richard C. Wells 1402 Borah Avenue Moscow, Idaho 83843	2003 XC90 T6	YV1CM91H931019827
46.	Shanie Young 7024 Meadowview Terrace North Richland Hills, Texas 76182	2005 XC90 T6	YV1CZ911X51150224
47.	Xiaolan Zhang 2201 W. Lake Sammamish Parkway, NE Redmond, Washington 98052	2003 XC90 T6	YV1CZ91HX31006490